IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 65/2006.

Sana Ullah S/o Inamullah R/o Village
Mundia Pistor Tehsil Bazpur,
District U.S. Nagar .. Appellant.

Vs

1- Nagar Palika Parishad Bazpur
Through Chairman Nagar Palika Parishad
Bazpur, District U.S. Nagar.
2- Executive Officer, Nagar Palika
Parishad Bazpur,
District U.S. Nagar ... Respondents.

Hon'ble B.C. Kandpal, J.

This Second Appeal, U/S 100 C.P.C. has been preferred against the judgment and decree dated 1-9-2006 passed by Addl. District Judge/ F.T.C. Kashipur, District U.S. Nagar in C.A. No. 79 of 2005 Sana Ullah Vs. Nagar Palika Parishad Bazpur and another, dismissing the appeal and upholding the judgment and decree dated 31-8-2005 passed by Addl. Civil Judge (J.D.) Kashipur, District U.S. N
Agar ih Civil Suit No. 18/2003.

2. The plaintiff/appellant instituted a suit against the defendants/ respondents for permanent injunction restraining them not too interfere in the peaceful possession of the plaintiff and from raising any drain, rasta in the shop land of the plaintiff. According to the plaintiff he has a 50 years old shop in ward No. 1 within the boundary Mauja Meena Islam Nagar Palika Parishad. In the noth of the shop there is vacant land

and rasta. The shop is registered in the name of the plaintiff in Nagar Palika Parishad Bazpur. The plaintiff alleged that the defendant Nagar Palika with a view to harm the plaintiff is intending to construct horse-trail (Khadanja) and drain on his shop land.

3. The defendants contested the suit by filling W.S. in which it was alleged that the plaintiff is not the owner of the land in dispute. The disputed land is situated within Ward No.1 revenue village Islam Nagar, Nagar Palika Bazpur. Khasra No. 168/1 has vast area of 3-082 hectoare, in which disputed land is also included. This land is recorded as class-6(2) in revenue record which is used for construction of road, railway building and other non-agricultural purposes. This land neither can be transferred to any one nor partitioned.

4- The learned trial Judge framed relevant issues in the case and thereafter parties led evidence. The trial court thereafter dismissed the suit.

5- The plaintiff against the judgment and decree passed by the Civil Judge (J.D.) preferred appeal before Addl. District Judge/F.T.C. Kashipur, who vide impugned judgment and decree dated 1-9-2006 has dismissed the appeal.

6- Feeling aggrieved by the judgment and decree passed by the Addl. District Judge/F.T.C. this second appeal has been preferred before this court.

7. In memo of appeal the following substantial questions of law have been formulated by the appellant:

1- Whther both the court below have committed a mistake in law in interpreting the entry of Varg 6(2) of Khataunio prepared according toa the U.P. Land Record Manual?.

2- Whether a person is entitled to protect his possession against eviction, which is otherwise then in a ccordance of law?.

3- Whether both the court below have committed a mistake in law in not appreciating that the provisions of Order 7 Rule 11 does not apply at the final stage of the suit?.

4- Whether the judgment and decree passed by the court below are perverse for not considering the oral evidence on record and for not appreciating the evidence on record properly?.

5- Whether the first appellate court has failed to exercise its jurisdiction in not deciding the question of possession in a suit specifically filed for permanent injunction?.

8- Heard learned counsel for the appellant and perused the record.

9- Undisputedly the Khasra No. 168/1 in class-6(2) land and after the creation of Nagar Palika Parishad Bazpur in the 1986 it came within the boundary of Nagar Palika Parishad. The defendant's case is that the land of class 6(2) neither can be transferred to any one, nor any one may be the owner of such type of land. The eland is used for the purposes of construction of roads, railway building and for other non-agricultural purposes. The case of the plaintiff/ appellant is that he is in possession of the shop from times of his forefathers and he got this shop in family partition. The plaintiff also filed photo copies of

assessment made by the Nagar Palika for his shop during the year 1997-98 and 1998-99. Prior to this no assessment was brought on record by the plaintiff. The defendants have alleged that the assessment for the aforesaid years 1997-98 and 1998-99 has been obtained by the plaintiff in collusion with employees of Nagar Palika. The plaintiff has not been able to prove the so called family partition in regard to the disputed shop. He also could not show how his father came into possession of the disputed shop. On the other hand the defendant Nagar Palika in order to establish its ownership on the disputed land has filed paper No. 21-Ga copy of Khautani and 22-Ga with regard to population. The defendant also filed 23-Ga the document of Nagar Palika Bazpur regarding years 1997-98 and 2000-2001. In these documents the disputed shop has not been shown in existence.

10- I have perused the judgment and decrees passed by both the courts below and I am of the view that both the courts below have recorded concurrent finding of fact and in second appeal require no interference. I do not find any illegality and impropriety in the concurrent findings recorded by both the courts below. I am of the view that no substantial question of law is involved in this second appeal and the appeal is liable to be dismissed outrightly.

11. Accordingly the second appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: October 17, 2006.